

RESOLUTION NO. 5614

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAUSALITO MAKING REQUIRED FINDINGS TO AUTHORIZE APPROVAL OF AN ENERGY SERVICES CONTRACT PURSUANT TO GOVERNMENT CODE SECTION 4217.12 FOR IMPROVEMENTS TO THE MARTIN LUTHER KING CAMPUS PROPERTY

WHEREAS, the City of Sausalito (the “City”) owns the Martin Luther King Campus property located at 100 Ebbtide Avenue in Sausalito, California (the “Property”), which consists of eleven buildings leased to various tenants, including a private school, small cottage industries, and artist studios, with the remainder of the property being dedicated for recreational purposes including basketball and tennis courts, a playground, dog park, and a gymnasium/multi-purpose building; and

WHEREAS, the City has determined that the Property is in need of maintenance, repair, and improvement, including the construction and implementation of conservation and energy saving measures, and a Comprehensive Facility Condition Assessment (“Facility Assessment”) was completed identifying necessary repairs, maintenance, and improvements to the Property; and

WHEREAS, Government Code section 4217.10 *et seq.*, authorizes the City to enter into an energy services contract on terms that the City Council determines are in the best interests of the City if the anticipated costs to the City for the energy conservation services provided under the contract will be less than the anticipated costs to the City of the cost of energy that would have been consumed in absence of the contract;

WHEREAS, ABM Building Services, LLC, (“Contractor”) completed an analysis of existing energy costs and potential energy conservation measures for the Property, which showed that there would be a net savings to the City due to the construction of energy conservation measures;

WHEREAS, on June 6, 2016, and ABM Building Services, LLC, (“Contractor”) entered into a Professional/Consulting Services Agreement (“Professional Services Agreement”) with the City whereby Contractor provided the engineering, planning, and drawing services necessary to implement the improvements and repairs for the initial phase of improvements as identified in the Facility Assessment as related to energy conservation measures; and

WHEREAS, the City desires to enter into an agreement with Contractor for the construction of said energy conservation improvements as detailed in the draft contract, attached hereto (“Energy Services Contract”, Exhibit A); and

WHEREAS, the total initial cost to the City for the energy conservation measures included in the Energy Services Contract will not exceed \$1,600,000; the total cost-savings to the City due to the energy conservation measures will exceed \$25,000 per year, for a total of over \$500,000 over the life of the project (as more particularly described in Exhibit B attached hereto and incorporated herein); and

WHEREAS, the proposed Energy Services Contract is in the City's best interests because the anticipated cost for the energy conservation services are less than the anticipated costs to the City of the energy that would have been consumed in absence of the Energy Services Contract; and

WHEREAS, consistent with Government Code section 4217.10 *et seq.*, the City posted a notice of the regularly scheduled public hearing at which the City would consider this resolution by publishing said notice in the Marin independent Journal on September 27, 2016; and

WHEREAS, on October 13, 2016, the City Council held a public hearing to receive and consider public comment, and discuss the City entering into an energy services contract for the construction of energy conservation measures as described herein; and

WHEREAS, this project is categorically exempt from the California Environmental Quality Act ("CEQA") pursuant to CEQA Guideline sections 15301, repair, maintenance, and minor alteration of existing structures, and 15061(b)(3) as it can be seen with certainty that the project will not have a significant effect on the environment.

NOW, THEREFORE, BE IT RESOLVED as follows:

1. The above recitations are true and correct, and adopted herein.
2. Pursuant to Government Code section 4217 *et seq.*, this Resolution is adopted at a regularly scheduled City Council meeting, after a public hearing, for which a minimum of two week's public notice was given.
3. Based on all available information, the City Council finds and determines that pursuant to Government Code section 4217.10 *et seq.*, the costs of the energy conservation measures contemplated in the Energy Services Contract will be less than the anticipated marginal costs to the City of the energy that would have been consumed by the City if said improvements were not contemplated.
4. It is in the City's best interest to enter into the Energy Services Contract.
5. That the City Manager is hereby authorized to do all things that are necessary to give effect to and comply with the terms and intent of this Resolution, including but not limited to the finalization and execution of the Energy Services Contract and any other actions deemed necessary to protect the interests of the City. The City Manager may delegate tasks associated with drafting and preparing the final Energy Services Contract to other City management personal.

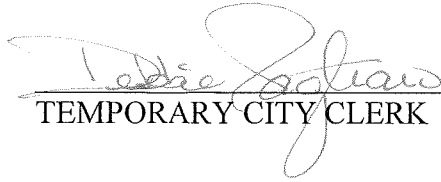
PASSED AND ADOPTED at a regular meeting of the City Council of the City of Sausalito on this 13th day of October 2016 by the following vote:

AYES:	Councilmembers:	Theodores, Weiner, Withy, Mayor Hoffman
NOES:	Councilmembers:	None
ABSTAIN:	Councilmembers:	Pfeifer
ABSENT:	Councilmembers:	None



MAYOR OF THE CITY OF SAUSALITO

ATTEST:



TEMPORARY CITY CLERK

DRAFT

ENERGY SERVICES CONSTRUCTION CONTRACT

Executed Between the City of Sausalito

and

ABM Building Services LLC

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EXHIBIT 1 DRAFT

ENERGY SERVICES CONSTRUCTION CONTRACT

This Energy Services Construction Contract (the "Agreement") is made and entered into this ____ day of _____ 2016 by and between the City of Sausalito, a California Municipal Corporation (the "City") and ABM Building Services, LLC ("Contractor" collectively the "Parties").

RECITALS

WHEREAS, the City owns the Martin Luther King Campus property located at 100 Ebbtide Avenue in Sausalito, California (the "Property"), which consists of eleven buildings leased to various tenants, including a private school, small cottage industries, and artist studios, with the remainder of the property being dedicated for recreational purposes including basketball and tennis courts, a playground, dog park, and a gymnasium/multi-purpose building; and

WHEREAS, the City has determined that the Property is in need of maintenance, repair, and improvement, including the construction and implementation of conservation and energy saving measures; and

WHEREAS, Faithful and Gold, Inc. completed a Comprehensive Facility Condition Assessment ("Facility Assessment") of the Property identifying necessary repairs, maintenance, and improvements to the Property; and

WHEREAS, on June 6, 2016, Contractor entered into a Professional/Consulting Services Agreement ("Professional Services Agreement") with the City whereby Contractor provided the engineering, planning, and drawing services necessary to implement the improvements and repairs for the initial phase of improvements as identified in the Facility Assessment; and

WHEREAS, pursuant to the Professional Services Agreement, Consultant also identified energy savings and conservation measures in the construction of improvements and repairs to the Property; and

WHEREAS, Government Code section 4217.10 *et seq.*, authorizes the City as a public agency to enter into an energy services contract pursuant to which Contractor will provide Conservation Services to the City on terms that the City Council determines are in the best interests of the City; and

WHEREAS, Conservation Services pursuant to Government Code section 4217.11(d) includes electrical, thermal, or other energy savings that result from conservation measures, which shall be treated as a supply of such energy; and

WHEREAS, the City desires to enter into a Conservation Services contract with Consultant for the implementation and construction those conservation measures Consultant identified in the Professional Services Agreement, as more particularly described in this Agreement; and

WHEREAS, the City Council made all required statutory findings to enter into this Agreement pursuant to Government Code section 4217.12, after a regularly scheduled public hearing, having provided a two week notice of such hearing; and

NOW THEREFORE in consideration of the mutual covenants, conditions, and consideration contained herein, the City and Contractor hereby agree as follows:

SECTION 1. DEFINITIONS. For the purposes of this Agreement, the definitions contained in this Section shall apply unless otherwise specifically stated. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular, and words in the singular include the plural. All references to a given Exhibit, agreement, instrument, or other document in this Agreement shall be a reference to that agreement, instrument, or other document as modified, amended, supplemented, and/or restated through the date of when the reference is made. A reference to a person includes its permitted successors and assigns.

1.1 Agreement. Has the meaning set forth in the preamble and shall include all Exhibits hereto. The Agreement represents the entire and integrated agreement between the Parties and supersedes prior negotiations, representations, or agreements, either written or oral.

1.2 Applicable Law. Shall mean, with respect to any governmental authority, any constitutional provision, law, statute, rule, regulation, ordinance, treaty, order, decree, judgment, decision, license, permit, authorization, or Governmental Approval in each case, applicable to the Work, Property, Project, the Parties, or any other matter in question, as applicable.

1.3 City. Shall mean the City of Sausalito.

1.4 Consultant. Shall mean any person performing or providing expert or professional advice.

1.5 Contract Documents. Shall mean this Agreement and all Drawings, specifications, surveys, plans, models, reports and designs, and addenda thereto, Governmental Approvals, engineering documents, payment and performance bonds, required insurance certificates, list of accepted Subcontractors and Consultants, and all other documents referred to in the Agreement, and valid written modifications issued after execution of the Agreement.

1.6 Contract Price. Shall have the meaning set forth in Section 3.1 of this Agreement, as the same may be modified from time to time pursuant with this Agreement.

1.7 Contractor. Shall have the meaning set forth in the preamble and means the Contractor or Contractor's authorized representatives.

1.8 Drawings. The graphic and pictorial portions of the Contract Documents prepared for the Project and approved changes thereto, showing the design, location, and scope of the Work, generally including plans, elevations, sections, details, and schedules.

1.9 Effective Date. Shall mean the date upon which the Agreement becomes effective as set forth in the preamble.

1.10 Equipment. Shall mean all materials, supplies, apparatus, machinery equipment, parts, tools, components, instruments, appliances, spare parts and appurtenances thereto that are required by the terms of this Agreement, the Contract Documents, and all Legal Requirements to complete the Work and to be incorporated into the Project; and all said items described in, required by, and reasonably inferable from the terms of the Agreement, Contract Documents, and all Legal Requirements.

1.11 Final Completion Certificate. Shall have the meaning set forth in Section 3 of this Agreement.

1.12 Final Completion Date. Shall mean the actual date on which the Final Completion has occurred, as set forth in the Final Completion Certificate.

1.13 Governmental Approval. Shall mean each and every national, state, regional, and local license, approval, authorization, certificate, registration, permit, or any other approval with or of any governmental authority, including each and every construction or operating permit and agreement, consent, or approval from or with any other person that is required by any Applicable Law.

1.14 Incentives. Shall mean all subsidies, rebates, credits, reductions, allowances, or other financial incentives for which the Contractor shall apply on behalf of the City.

1.15 Industry Standards. Shall mean those standards of care and diligence practiced or approved by reasonably prudent contractors doing the same or similar work to that described in this Agreement. Industry Standards are not intended to be limited to optimum practice methods, Equipment specifications, or acts to the exclusion of all others, but to be a spectrum of reasonable and prudent practices and methods generally accepted to accomplish the desired results taking into consideration the conditions specific to any given facility, including to the extent such conditions would require a

person to perform duties in good faith as a reasonably prudent person; perform duties in compliance with the Contract Documents; exercise care, skill, and diligence as a reasonably prudent business of established reputation; and use parts and supplies that meet the specifications set forth in the Contract Documents.

1.16 Legal Requirement(s). Shall mean the requirement of any Applicable Law or any Governmental Approval.

1.17 Progress Payment. Shall have the meaning set forth in Section 3 of this Agreement.

1.18 Project. Shall mean all project development, engineering, design, and total construction of the Work described in this Agreement and Contract Documents.

1.19 Project Schedule. Shall have the meaning set forth in Section 4 of this Agreement.

1.20 Safety Plan. Shall mean a plan prepared by Contractor that includes the elements required by the City and otherwise includes all matters relating to safety as required by Applicable Law and the Contract Documents.

1.21 Subcontractor. Shall mean any person, other than Contractor, performing or providing any portion of the Work, whether retained by Contractor or affiliate, or any person hired by Contractor, including every tier of Subcontractors, and any Supplier.

1.22 Supplier. Shall mean any person providing or supplying all or a portion of the Equipment.

1.23 Utility. Shall mean the utility providing electrical services to the Property and site.

1.24 Warranties. Shall mean, collectively, the warranties provided by Contractor to the City provided in the Agreement.

1.25 Work. Shall mean the procurement, installation, construction, commissioning, start-up and testing, and all of services, including all labor materials' storage, services, demolition site preparation, equipping, verification, and other things and actions in connection therewith, as necessary for Contractor to fulfill its obligations pursuant to this Agreement, the Contract Documents, any Change Orders, the requirements of the Utility, Governmental Approvals, and any other Legal Requirement, and all of the foregoing that Contractor performs through any Subcontractor or Consultant.

SECTION 2. CONTRACTOR'S OBLIGATIONS.

2.1 Scope of Work. Contractor shall supervise, direct, and complete all Work; Contractor agrees to provide all supervision, labor, Equipment and materials, tools, utilities, communications, implements, appliances and transportation; to procure all Government Approvals; to facilitate completion and execution of any Incentive related documents and all related applications; to coordinate with the Utility for any and all necessary requirements regarding the Project; to erect, install, start-up, test, and commission the Project; to perform all obligations set forth in the Contract Documents; to perform the Work in a good and workmanlike manner, free from any and all liens and claims from mechanics, material Suppliers, Subcontractors, artisans, machinists, teamsters, freight carriers, and laborers required for the Project as defined by the Contract Documents; all in strict compliance with the City's objectives, descriptions, and specifications, the Contract Documents, Industry Standards, Legal Requirements, and quality controls and inspections relating thereto so that the Project: (i) meets or exceeds all Legal Requirements; (ii) the Project improvements are installed pursuant to manufacturer's specifications; (iii) is comprised of Equipment which is new (unless otherwise mutually agreed) and of the agreed quality when installed, designed, and manufactured and of a grade pursuant with generally accepted national standards for the design, manufacture, and quality of such Equipment; and (iv) meets or exceeds all requirements for any applicable Incentive. Contractor shall be solely responsible for and have control over construction means, methods, and techniques, and coordinate all portions of the Work under the Agreement, unless the Contract Documents specify otherwise. The Scope of Work is more fully and specifically defined in Exhibit A attached hereto.

2.2 Performance of the Work. Contractor shall perform the Work pursuant to the requirements in the Contract Documents, the Scope of Work, Utility and Industry Standards, Legal Requirements, and the Safety Plan. To the extent that any portion of the Work is provided with Contractor's own forces, any reference to Subcontractors or Consultants shall be equally applicable to Contractor. If any of the Work is performed by the City's contractors, Contractor shall be responsible for the coordination and sequencing of the Work of the City's contractors.

2.3 Contractor Personnel.

2.3.1 Competency. Contractor agrees to use, and require each Subcontractor and/or Contractor to use, personnel who are qualified and properly trained and have all required licenses, permits, registrations, or other approvals required by Applicable Law as necessary for the proper administration, coordination, and supervision of its portion of the Work; organize the procurement of all materials and Equipment so that they will be at the time they are needed for the Work; and maintain an adequate force of skilled workers

on the job to complete the Work pursuant to all Contract Documents. The City may, but is not obligated to, require the removal from the Project of any Superintendent, staff member, agent, or employee of any Contractor, Subcontractor, material or Equipment Supplier, etc., for cause.

2.3.2 Superintendent. Contractor shall provide a competent superintendent and assistants as necessary based on the Scope of Work, and who shall be in attendance at the Property during work the Property.

2.3.3 Prevailing Wage. The Project is a public work and the Work shall be performed as a public work in compliance with the prevailing wage requirements in California Labor Code section 1770 *et seq.*

2.3.4 Working Time Limits. Pursuant to Labor Code sections 1810 through 1815, no worker employed by Contractor or a Subcontractor performing or contracting to perform any part of the Work shall work in excess of 8 hours during any one day or 40 hours during any one calendar week, provided that such work may be performed in excess of said time limits if compensation is paid for all at a rate of not less than 1½ the basic rate of pay for time worked in excess of 8 hours per day or 40 hours per week. Contractor and each Subcontractor shall keep accurate records showing the name and actual hours worked each day and each calendar week for every person performing Work on the Project. Contractor and each Subcontractor shall keep said records open at all reasonable hours to City and California Division of Labor Law Enforcement inspection. Contractor shall owe to the City a penalty of \$25.00 for each worker required or permitted to work more than 8 hours in any one day or in more than 40 hours in a calendar week, except as herein provided.

2.3.5 Non-Discrimination. In connection with the performance of this Agreement, Contractor agrees on behalf of itself and Subcontractors not to discriminate against any employee or applicant for employment with respect to hire, discharge, or any term, condition, or privilege of employment because of the person's race, color, religion, age, sex, marital status, veteran's status, national origin, ancestry, present or past history or mental disorder or learning or physical disability, sexual orientation, or gender identity, except in the case of a bona fide occupational qualification or need. Contractor further agrees that every Subcontractor under this Agreement will contain a provision requiring nondiscrimination of employment, as herein specified, binding upon each Subcontractor with three or more persons in its employ.

2.3.6 Apprentices. Contractor agrees to comply with Labor Code sections 1777.5 and 1777.6, which require that contractors and subcontractors employ apprentices in apprenticeable occupations in a ratio of not less than 1 hour of apprentice's work for each 5 hours of worked performed by a journeyman (unless an exemption is granted) and that contractors and subcontractors shall not discriminate among otherwise qualified

employees as apprentices on any public work solely on the ground of sex, race, religion, national origin, ancestry, or color. Only apprentices defined in Labor Code section 3077, who are training under apprenticeship standards and who have signed written apprentice agreements, will be employed on public works in apprenticeable occupations. Contractor maintains responsibility for compliance with the aforementioned sections of the Labor Code regarding apprentices.

2.3.7 Employment List. Contractor and each Subcontractor shall maintain an accurate record for Work on the Project showing names, addresses, social security numbers, work classification, straight time and overtime hours worked, and occupation of all laborers, workers, and mechanics employed by them in connection with the performance of this Agreement or any Subcontractor ("Employment List"). The Employment list shall show the actual daily wage for each worker. The Employment List shall be available for inspection at all reasonable hours by the City, the California Division of Labor Law Enforcement, and the California Department of Industrial Relations.

2.3.8 Compliance Monitoring. The Project is subject to compliance monitoring and enforcement by the California Department of Industrial Relations. Contractor has sole responsibility to evaluate and pay the cost of compliance with all labor compliance requirements under the Contract Documents and Applicable Law.

2.3.9 Contractor and Subcontractor Registration. No bid will be accepted, nor any contract entered into, without proof of the Subcontractor's current registration with the California Department of Industrial Relations to perform public work as required pursuant to Labor Code sections 1725.5 and 1771.1.

2.4 Contractor Responsibility. Contractor shall be responsible to the City for acts and omissions of the Contractor's employees, Subcontractors, material and Equipment Suppliers, and their agents, employees, invitees, and other persons performing portions of the Work under direct or indirect contract with Contractor or any Subcontractor. Contractor shall not be relieved of obligations to perform Work pursuant to the Contract Documents by tests, inspections, or approvals required or performed by persons other than Contractor. Contractor shall be responsible for inspection of Work already performed under the Contract Documents to determine that such portions are in proper condition to receive subsequent work. Nothing in this Agreement or otherwise shall create a contractual agreement between the City and a Subcontractor.

2.5 Subcontractors and Other Contracts for Portions of the Work.

2.5.1 Subcontractors shall be selected by Contractor and presented to the City for approval in its reasonable discretion. Subcontractor substitution shall not increase the Contract Price or grant an extension of time for the Project Schedule. To the extent a

Subcontractor performs Work, by valid agreement Contractor shall require each Subcontractor to be bound to the Contractor by the terms of the Contract Documents and assume towards Contractor those obligations and responsibilities which Contractor assumes to the City.

2.5.2 Each Subcontract agreement for a portion of the Work is assigned by Contractor to the City, provided that: (i) assignment is effective only after termination of the Agreement with Contractor by the City for cause pursuant to this Agreement and only for those Subcontract agreement the City accepts by notifying the Subcontractor in writing; and (ii) assignment is subjects to the prior rights of the surety, if any, obligated under any bond relating to the Agreement.

2.6 Supply and Procurement of Equipment.

2.6.1 Except as provided to the contrary in the Scope of Work, Contractor at its expense shall purchase, transport, and deliver all Equipment and shall inspect, unload, store, construct, and install all Equipment required to complete the Project. Contractor shall maintain all Equipment Warranties, obtain required extended warranties when available, and upon the expiration of the Warranty Period, cause any such remaining Equipment Warranties to be assigned and passed through to the City. Contractor shall perform the Work in a manner consistent with Equipment Warranties and shall not perform any actions or omissions that may violate such Warranties.

2.6.2 Contractor agrees that all materials and Equipment to be supplied or used by Contractor or any Subcontractor under this Agreement shall be new, unless otherwise specified or mutually agreed. Materials and Equipment shall be maintained, inspected, and operated by Contractor and Subcontractors pursuant to Industry Standards and as required by Applicable Law. Contractor agrees that all licenses, permits, registrations, or other approvals required by Applicable Law will be procured and maintained for materials and Equipment at all times during the performance of the Work.

2.6.3. Contractor shall maintain an active inventory list for the Equipment (including any claim under the Warranties), and maintain the active inventory list to reflect serial numbers and all other information reasonably required by the City with respect to any new Equipment installed as part of the Work.

2.6.4 In addition to the Warranty obligations under this Agreement, Contractor shall procure from each Equipment vendor a spare parts list of those supplies and parts required for the operation of the Equipment.

2.7 Taxes. Contractor shall pay all applicable federal, state, and local taxes on all materials, labor, and/or services furnished by it, and all taxes arising out of its operations under the Contract Documents. The City is exempt from Federal Excise Tax, and will

provide Contractor with a certificate of exemption upon request.

2.8 Utilities. Contractor shall supply temporary power, telecommunications, water, waste disposal, and other utilities and services required for the performance of the Work, and is responsible for providing Equipment and facilities to the City to interconnect with local telecommunication utilities and obtain permanent telecommunication services as required for the Project.

2.9 Utility Rate Changes. To the extent that the Work qualifies the City for a change in rates from the Pacific Gas & Electric Company ("PG&E"), Contractor shall coordinate with PG&E to ensure that the City is receiving the best permissible rates for gas and electric service associated with the facilities affected by the Work.

2.10 Incentives. Contractor shall facilitate completion and execution of any Incentive related documents and all related applications. Contractor acknowledges that it has no right or interest in any such subsidies, rebates, or other incentives.

2.11 Permits and Approvals.

2.11.1 Contractor shall obtain, maintain, and pay for all Government Approvals necessary in connection with the Work. The City shall provide Contractor with reasonable assistance as requested to obtain Government Approvals. Copies of all Government Approvals shall be provided to the City no more than 5 business days after they are obtained or completed. The City will review and approve said documents prior to commencement of construction.

2.11.2 If applicable, Contractor shall file a notice of intent to comply with terms of the general storm water discharge permit associated with construction activity prior to the start of any construction activity.

2.12 Testing and Inspection. Contractor shall conduct a performance and start up test of all Equipment installed as part of the Work. Contractor shall verify that all Equipment is functioning as expected within acceptable parameters as defined by the manufacturer(s) of the Equipment, and that the Equipment and related improvements are operating as expected by the City. Contractor will notify the City no less than 5 days business days prior to the commencement of testing, and the City shall have the right to observe such tests.

2.12.1 Additional Testing or Inspection.

(i) If the City or any applicable governmental authority determines that any portion of the Work requires additional testing, inspection, or approval, Contractor will

arrange for such additional testing, inspection or approval upon the City's authorization. The City shall bear such costs, except as stated below.

(ii) If testing or inspection of Work reveals that the Work does not comply with the Contract Documents, Contractor shall bear all costs arising from such failure, including re-testing, re-inspection, approval, and re-approval, including but not limited to, compensation for services and expenses for testing and any other professionals or entities retained by the City. Any costs shall be paid for by the City and the City shall invoice them to Contractor, who shall make payment thereof in full within 30 calendar days; failure to do so shall entitle the City to withhold the amount of payment due to the Contractor.

2.12.2 Costs for Premature Test. If Contractor requests any test or inspection for any portion of the Project and that portion is not ready for inspection, the City shall have the right to invoice Contractor for all costs and expenses relating to the testing or inspection. Any costs shall be paid for by the City and the City shall invoice them to Contractor, who shall make payment thereof in full within 30 calendar days; failure to do so shall entitle the City to withhold the amount of payment due to the Contractor.

2.12.3 Tests and Inspection Not to Delay Work. Tests and inspections shall be made promptly to avoid unreasonable delay in the Work.

2.13 Safety Precautions and Programs.

2.13.1 Contractor shall initiate, maintain, and supervise a Safety Plan in connection with the Work. Subcontractors shall participate in, and enforce, the Safety Plan. Subcontractors shall report in writing and telephone to Contractor all accidents related to the Work resulting in death, injury, or property damage, giving full details and witnesses.

2.13.2 Prior to beginning construction, Contractor shall provide the City a copy of the Safety Plan and documentation of Contractors' and Subcontractors' safety record.

2.14 Protection of Work and Property.

2.14.1 Contractor and Subcontractors shall protect and secure the Work, materials and Equipment the City's property, and the property of others, from damage, injury, or loss arising in connection with the Work.

2.14.2 Contractor shall keep the Project site and surrounding area free from accumulation of waste caused by the Work. The site shall be maintained in a safe and orderly condition. If Contractor fails to comply with this Section, the City may do so without prior notice to the Contractor and the cost thereof shall be invoiced to Contractor

and withheld from payment to Contractor. Upon completion of the Project, Contractor and Subcontractors shall dismantle and remove all temporary structures, waste, and other debris related to the Work, from the site.

2.15 Emergencies. In an emergency affecting the safety of persons or property, Contractor and Subcontractors shall take all necessary action to prevent threatened damage, injury, or loss. Any additional compensation or extension of time claimed by Contractor or Subcontractor due to said emergency shall be determined as provided in this Agreement. Contractor shall promptly report in writing and by telephone to the City all accidents related to the Work that caused death, personal injury, or property damage, giving full details and statements of any witnesses.

2.16 Materials. In the event Contractor or any Subcontractor encounters or suspects the presence of material reasonably believed to be asbestos, polychlorinated biphenyl (PCB), or any other material defined as hazardous per Health and Safety Code section 25249.5 or Applicable Law, which has not been rendered harmless, Contractor shall immediately stop Work in the affected area and report the condition to the City by telephone and in writing, regardless of whether such material was generated by Contractor or the City. Contractor shall be accountable for all costs or penalties associated with the presence of hazardous materials and delays due to the hazardous materials where its presence is due to the Contractor's negligent acts or omissions. To the extent the City is aware of the presence of any hazardous materials at the Project site, the City shall inform Contractor of the location and shall bear responsibility for reasonable damages due to the failure to disclose such to Contractor.

2.17 Change Orders.

2.17.1 To request a Change Order, the City or Contractor shall prepare and submit a draft Change Order in the Form of Exhibit B for review by the other Party.

2.17.2 Within 10 business days after receipt of a Change Order request, the receiving Party shall either accept the Change Order and deliver an executed copy to the initiating Party; or reject the Change Order request and deliver a written explanation to the other Party of the reasons the decision (which may include a request for additional information, documentation, or cost detail.) Contractor and the City shall negotiate in good faith and as expeditiously as possible for the appropriate adjustment resulting from a Change Order request. If no agreement can be reached, then the Parties shall follow the Dispute Resolution provisions in this Agreement.

2.17.4 The City has the authority to order minor changes in the Work without a Change Order provided there is: (i) no adjustment in the Contract Price; (ii) no extension of the Project Schedule; and (iii) it is consistent with the intent of the Contract Documents. Such changes shall be effected in writing and binding upon the City and

Contractor.

2.17.5 The increase or decrease in the Contract Price resulting from a Change Order shall be determined by one or more of the following methods: (i) a mutually accepted lump sum supported by sufficient substantiating data to permit evaluation by the City; or (ii) unit prices stated in Contractor's original bid, the Contract Documents, or subsequently agreed upon by the Parties; (iii) cost to be determined in a manner agreed upon by the Parties and a mutually acceptable fixed or percentage fee; or (iv) by cost of material and labor and percentage of overhead and profit per the Schedule of Values. Contractor and Subcontractors may make up their own work by 5% for overhead, bond and insurance premiums, and profit. Contractor may make up a Subcontractor's total costs by 5%. It is expressly understood that the value of such extra work or changes, determined by the aforementioned methods, includes all of Contractor's costs and expenses, both direct and indirect, resulting from additional time required for the Project or resulting from delay to the Project. Any costs and expenses not included are deemed waived. For purposes of determining the cost, if any, of any change, addition, or omission to the Project, all trade discounts, rebates, refunds, and all returns from the sale of surplus materials and Equipment shall accrue and be credited to Contractor, and Contractor shall make provisions so that such discounts, rebates, refunds, and returns may be secured, and the amount thereof shall be allowed as a reduction of Contractor's cost in determining the actual cost of construction for purposes of any change, addition, or omission in the Project as provided herein. If no agreement can be reached regarding the increase or decrease in Contract Price due to a Change Order, then the parties shall follow the Dispute Resolution provisions in this Agreement

2.17.7 Notwithstanding any other provision of this Agreement, in the event a Change Order is necessitated as a result of wrongful acts or omissions on the part of the Contractor, or the engineering documents, plans, specifications, or designs for the Project, Contractor shall be responsible for all of the following:

(i) Costs of all engineering, design, labor, and materials necessary to fully correct the wrongful acts or omissions of Contractor, or the error or omission in the engineering documents, plans, specification, or designs for the Project;

(ii) Any other costs or damages that the City incurs as a result of the wrongful acts or omissions of Contractor, or the error or omission in the engineering documents, plans, specification, or designs for the Project, including, but not limited to, any delay damages the City incurs; and

(iii) The costs of any third-party engineer, contractor, or consulting work that the City, in the City's sole discretion, must retain to ensure the proper rectification of wrongful acts or omissions of Contractor, or the error or omission in the engineering documents, plans, specification, or designs for the Project.

The City may backcharge, and withhold payment from, Contractor for these costs, and seek reimbursement for any amount that exceed retention of the Agreement amount at the time of collection. When the City so backcharges and withholds, upon Contractor's request, the City and Contractor shall meet and confer in good faith to reach an agreement on: (i) whether the wrongful act or omission occurred, or whether there was an error or omission in the engineering documents, plans, specification, or designs for the Project; (ii) whether it caused the Change Order expense; (iii) what damages the City has incurred; and (iv) what portion of the damages are attributable to Contractor as described above. If the City and Contractor do not reach agreement, the Parties shall follow the Dispute Resolution provisions in this Agreement.

2.17.8 Change Orders Requiring Additional Time/Excusable Delays. The Parties agree that a reasonable extension(s) of time to complete the Work may be necessary to accommodate changes or modifications due to circumstances including an act or neglect of the City or a contractor or employee of the City; changes ordered in the Work by the City; acts of nature; unusual delays in deliveries; unavoidable casualties; delays authorized by the City pending mediation or arbitration; or by other causes that may justify delay. In such cases, then the Project Schedule shall be extended by Change Order for such reasonable time as the City may determine pursuant to this Section. If Contractor disagrees with the extension of time, the parties shall follow the Dispute Resolution provisions in this Agreement.

2.18 Insurance.

2.18.1 Required Coverage. Contractor shall obtain, maintain, and keep in force during the Term of this Agreement, including any extensions thereof, the following types and amounts of insurance:

i) Comprehensive General Liability insurance for bodily injury claims (including death) in the amount of one million dollars (\$1,000,000) per occurrence, with a one million dollars (\$1,000,000) policy aggregate, and property damage claim limits of one million dollars (\$1,000,000) per occurrence, with a one million dollars (\$1,000,000) policy aggregate. Such insurance shall include, but shall not be limited to, contractual liability, personal injury liability, explosion and collapse hazard coverage, and products and completed operations liability.

ii) Workers' compensation insurance complying with all Applicable Laws and employers' liability insurance with limits of at least one million dollars (\$1,000,000). Contractor shall also require all contractors, Subcontractors, and Consultants to maintain workers' compensation insurance that complies with Applicable Laws and employers' liability insurance with limits of at least one million dollars (\$1,000,000).

iii) Commercial automobile liability insurance with a combined single limit of one million dollars (\$1,000,000) per accident, covering all owned, hired, and non-owned vehicles. Contractor shall require all Subcontractors to maintain automobile liability insurance with a combined single limit of one million dollars (\$1,000,000) per accident, covering all owned, hired, and non-owned vehicles.

iv) Builder's All-Risk/Course-of-Construction insurance issued on a completed value basis on all insurable Work, which insurance shall be subject to the City's approval not to be unreasonably withheld. This insurance shall include, but not be limited to, vandalism, theft, fire, acts of nature, debris removal, and reasonable compensation for the City's costs and expenses required as a result of such insured loss. The insurance shall provide coverage in an amount not less than the full cost to repair, replace, or reconstruct the Work.

v) Fire insurance on all Work insuring the full replacement value of the Work as well as the cost of removal and demolition necessary to replace the Work and property damaged by the fire. This insurance shall be subject to the City's approval not to be unreasonably withheld, in an amount reasonably determined by the City.

vi) Errors and omissions insurance on a claims made basis with limits of at least one million dollars (\$1,000,000) with a self-insured retention in an amount not to exceed one million dollars (\$1,000,000) and Contractor will maintain such coverage for a period of 5 years following the final completion date of the Project.

2.18.2 Additional Insured. Contractor shall name the City and the City's designated representative as additional insureds on Contractor's commercial liability, builder's all-risk/course-of-construction, commercial automobile liability, and excess/umbrella policies.

2.18.3 Notice of Cancellation or Non-Renewal. Contractor's insurance policies shall contain a provision for 30 days written notice to the City of cancellation and 10 days written notice to the City for non-payment of premium. Alternatively, Contractor's broker shall provide 30 days written notice of cancellation to the City and 10 days written notice to the City of non-payment of premium.

2.18.4 Compliance. If Contractor fails to maintain the required insurance or cure any defects therein within 5 calendar days after receiving notice of the defect(s), the City may, but shall not be required to, take out such insurance for which the City may be held liable on account of Contractor's failure to pay such damages, and deduct and retain the amount of the premiums from any sums due to Contractor under this Agreement.

2.18.5 No Limitation of Liability. Nothing in this Agreement shall be construed as limiting the extent to which Contractor may be held responsible for payment of damages resulting from Contractor's operations, actions, or omissions.

2.19 Performance and Payment Bonds. Prior to commencing Work, Contractor shall provide the City a Performance Bond and a Payment Bond on forms to be provided by the City, which bonds shall cover 100% of the faithful performance of all obligations under the Contract Documents and guaranteeing the payment in full of all costs for labor performed and materials supplied for the Work. The bonds shall be executed by a corporate surety licensed to transact such business in the State of California with a rating of not lower than "A". The City may approve or reject the surety insurers selected by Contractor and require Contractor to obtain bonds from surety insurers satisfactory to the City in its discretion. Notwithstanding anything to the contrary in the Contract Documents, the liability of the surety on the performance bond shall cease 2 years after the Final Completion Date. Any warranty or guarantee required of Contractor by the Contract Documents shall be the sole obligation of Contractor after termination of the surety's performance bond liability. The liability of the surety on the payment bond shall continue only so long as required by law.

2.20 City's Right to Stop Work and Carry Out Work. If Contractor fails to correct Work or perform Work in accordance with Contract Documents, as determined by the City, the City in writing may order Contractor to stop the Work or any portion thereof until the cause for such order has been eliminated to the City's satisfaction.

2.21 City's Right to Perform Work. If Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents, and fails within 30 business days after the City's giving notice to Contractor of such failure, to diligently commence and continue correction of such default or neglect, the City correct such deficiencies in the City's discretion without prejudice to the City's other remedies. The City may withhold the cost of such correction from any sums due to Contractor under this Agreement.

SECTION 3. PRICE AND PAYMENT.

3.1 Contract Price. As full and complete compensation for Contractor's obligation under the Contract Documents, the City shall pay to Contractor \$1,600,000, and Contractor shall accept this amount as payment in full by the City for the delivery of the Project, performance of the Work, and its other obligations under the Contract Documents. The Contract Price shall only be adjusted by Change Orders pursuant to this Agreement. Except as otherwise provided in this Agreement, Contractor shall assume the risk of all costs in excess of the Contract Price in the performance of the Work and to provide a fully completed and successfully operational Project, complete in every detail according to the Contract Documents and Contractor shall not be entitled to additional payments because of any excess costs.

3.2 Monthly Progress Payments. The Parties agree on a Schedule of Values (Exhibit C) that subdivides the Work into separate parts, includes values for all items

comprising the Work, and serves as the basis for Monthly Progress Payments to Contractor throughout the Work. Contractor shall invoice the City monthly for its approval, a request for a monthly Progress Payment in a form acceptable to the City, for that portion of the Work completed prior to the date of such request, less any Retainage (as defined below) within 30 calendar days after its receipt. Such requests for payment shall be submitted to the City on or before the 20th day of each month.

3.3 Disputed Requests for Progress Payments. If the City disputes any request for monthly Progress Payment, or any portion thereof, the City shall withhold the disputed amount and provide Contractor a written explanation of the basis of the dispute and amount being withheld. The Parties shall mutually resolve the disputed amount informally or through the Dispute Resolution process pursuant to this Agreement.

3.4 Retainage. The City shall withhold a retainage amount of 5% of each monthly payment pursuant to Public Contract Code sections 7201 and 9203. At any time after 50% or more of the Work has been completed, the City Council may, but is not required to, approve monthly Progress Payments in full without Retainage. The City shall pay all Retainage upon final completion of the Project.

3.5 Final Completion Certificate and Final Payment. When Contractor believes it has fully completed the Work, Contractor shall notify the City in writing that the Work is complete and ready for final inspection. The City shall inspect the Work to verify Final Completion of Work. If the City determines that any Work is defective and/or incomplete, the City shall promptly notify Contractor of such defect or incompleteness. Contractor shall then promptly complete or repair defects to the Work and re-notify the City when finished. When the City agrees that the Work is fully complete pursuant to the Contract Documents, the City shall give notice of acceptance of the Work and deliver a Final Completion Certificate to Contractor. The City shall pay the final payment to Contractor, including all outstanding amounts due to Contractor and Retainage, within 60 days of delivering the Final Completion Certificate to Contractor. The City may only accept the work and issue a Final Completion Certificate by action of the City Council.

3.6 Substitution of Securities. In accordance with Public Contract Code section 22300, the City will permit the substitution of securities for any monies withheld by the City to ensure performance under the Contract. At the request and expense of Contractor, securities equivalent to the amount withheld shall be deposited with the City or with a state or federally chartered bank as the escrow agent, who shall then pay such monies to Contractor. Upon completion of the Agreement, the securities shall be returned to Contractor. Securities eligible for investment under this Section shall include those listed in Government Code section 16430, bank or savings and loan certificates of deposit, interest-bearing, demand- deposit accounts, standby letters of credit, or any other security mutually agreed to by Contractor and the City. Contractor shall be the beneficial owner

of any securities substituted for monies withheld and shall receive any interest therein. Any escrow agreement used shall be substantially similar to the form set forth in Public Contract Code section 22300.

SECTION 4. COMMENCEMENT AND SCHEDULE.

4.1 Project Schedule. Time is the essence in this Agreement. Subject to the terms of the Contract Documents, Contractor shall perform and complete Work hereunder pursuant to the Project Schedule (Exhibit D), unless otherwise modified pursuant to this Agreement.

4.2 Notice to Proceed. Within 15 business days of receipt and approval of the engineering documents, and all required plans, Drawings, and any other design or planning document, and copies of all Government Approvals to begin construction of the Project, the City shall issue a written Notice to Proceed. Contractor shall begin Work within 30 calendar days after the City issues a Notice to Proceed.

SECTION 5. EVENTS OF DEFAULT; FORCE MAJEURE.

5.1. Events of Default by City.

5.1.1 Any failure by the City to perform or comply with the terms of this Agreement, and such failure continues for 90 calendar days after notice to the City demanding that such failure to perform be cured. However, such failure to be performed will not be deemed a default hereunder if it is due to causes beyond the City's control such as a Force Majeure or Utility Work.

5.1.2 Any representation or warranty by City in this Agreement that was false or misleading in any material respect when made; or

5.1.3 City's failure to pay Contractor any amount due under this Agreement that is not paid within 10 business days after written notice from Contractor that the amount is past due.

5.2 Events of Default by Contractor.

5.2.1 Any failure by the Contractor to perform or comply with the terms of this Agreement, and such failure continues for 60 calendar days after notice to Contractor demanding that such failure to perform be cured. However, such failure to be performed will not be deemed a default hereunder if it is due to causes beyond the Contractor's control such as a Force Majeure or Utility Work.

5.2.1 Any representation or warranty by Contractor in this Agreement that was false or misleading in any material respect when made; or

5.2.4 Any lien or encumbrance is placed upon the Equipment by any Subcontractor, laborer, or Supplier of Contractor, which is not timely removed by Contractor; provided that such lien or encumbrance is not the result of any act or failure to act of the City.

5.3 Force Majeure. The Parties shall be excused from performing their respective obligations hereunder in the event they are prevented from so performing by reason of any acts of nature, such as landslides, lightning, fires, storms, floods, pestilence, freezing, and earthquakes; explosions, sabotage, civil disturbances, acts of a public enemy, wars, blockades, riots, or other industrial disturbances, eminent domain or other taking, or other events of a similar nature, not caused or maintained by the City or Contractor, which event is not reasonably within the control of the Party claiming the excuse from its obligations due to such event, to the extent such event has a significant and material adverse effect on the ability of a Party to perform its obligations hereunder. Notwithstanding below, each economic hardship of either Party, or increases in the cost of performance of a Party's obligations shall not constitute a Force Majeure event.

Force Majeure shall not include:

(i) mechanical or Equipment failures (except to the extent any failure is itself caused by a Force Majeure event);

(ii) any condition of the Property for which the affected party is responsible under this Agreement other than the discovery of pre-existing hazardous materials, as that term is defined by Applicable Law, so long as the condition was unknown and should not reasonably have been known as of the Effective Date of this Agreement; and any materials released at the property other than by Contractor, any Subcontractor, or persons acting on behalf thereof;

(iii) increases in the cost of performance of a Party's obligations under this Agreement (except to the extent any such increase is caused by a Force Majeure event);

(iv) any delay or other problems associated with the issuance of any Governmental Approval or for the application thereof, other than the failure of the Government Authority to issue its approval to start construction of the Project on or before the date specified in the Project Schedule, through no fault of the Party claiming the Force Majeure event and despite the Party's best efforts;

(v) strikes, walkouts, lockouts, or other labor disturbances or disputes specific to the Project or such Party claiming a Force Majeure event.

SECTION 6. REMEDIES UPON DEFAULT.

6.1 Remedies Upon Default by the City.

6.1.1 Notice and Opportunity to Cure. Contractor shall provide written notice to City of an Event of Default. Where the Event of Default may be cured, the City shall take action and cure the default within 15 calendar days after the date of receipt of Contractor's written notice. The Parties may mutually agree in writing to a longer time to cure period. Contractor's authority to exercise legal remedies pursuant to this Agreement is contingent on providing notice of the Event and Default and opportunity to cure pursuant to this Subsection.

6.1.2 Legal Remedies. After compliance with the above Subsection (i), if an Event of a Default by the City occurs, or continues to occur, Contractor will be entitled to obtain any and all available legal and/or equitable remedies including, without limitation termination of this Agreement; recovery of amounts due and unpaid by the City; recovery of damages, including Contractor's reasonable, actual, and direct out-of-pocket losses due to the Event of Default; and recovery of legal fees, and all costs and expenses reasonably incurred in exercising the foregoing remedies.

6.2 Remedies Upon Default of Contractor.

6.2.1 Notice and Opportunity to Cure. The City shall provide written notice to Contractor of an Event of Default. Where the Event of Default may be cured, Contractor shall take action and cure the default within 15 calendar days after the date of receipt of the City's written notice. The Parties may mutually agree in writing to a longer time to cure period. The City's authority to exercise legal remedies pursuant to this Agreement is contingent on providing notice of the Event and Default and opportunity to cure pursuant to this Subsection.

6.2.2. Legal Remedies. After compliance with the above Subsection (i), if an Event of a Default by Contractor occurs, or continues to occur, the City will be entitled to obtain any and all available legal and/or equitable remedies including, without limitation: termination of this Agreement; recovery of damages, including the City's reasonable, actual, and direct out-of-pocket losses due to the Event of Default; and recovery of legal fees, and all costs and expenses reasonably incurred in exercising the foregoing remedies. Any payment made by the City to Contractor shall not constitute a waiver of the right to exercise any other remedies.

6.2.3 Suspension for Convenience. Notwithstanding anything to the contrary in this Agreement, the City may, without cause, order Contractor in writing to suspend, delay, or interrupt the Work in whole or in part for such period of time as the City may

determine in its discretion. An adjustment shall be made for increases in the cost of performance of the Agreement, including profit on the increased cost of performance caused by suspension, delay, or interruption. No adjustment shall be made to the extent that the performance is, was, or would have been so suspended, delayed, or interrupted by another cause for which Contractor is responsible; or that an equitable adjustment is made or denied under another provision of this Agreement. The City's right to exercise said remedy is made without prejudice to any other City right or remedy.

6.2.4 Termination for Convenience. Notwithstanding anything to the contrary in this Agreement, if a Contractor Event of Default occurs, and Contractor fails to cure pursuant to the Agreement, the City may, and after giving Contractor and Contractor's surety (if any) 7 calendar days written notice, terminate the Agreement. The City may, subject to any prior rights of the surety, take possession of the Property, all material, Equipment, tools, construction equipment, and machinery thereon owned by Contractor; accept assignment of Subcontracts; and complete the Work by whatever reasonable method the City may deem reasonable and expedient. The City's right to exercise said remedy is made without prejudice to any other City right or remedy.

SECTION 7. REPRESENTATIONS AND WARRANTIES.

7.1 Mutual Representations and Warranties. Each Party represents and warrants to the other that:

7.1.1 it has all requisite power, authority, licenses, permits, and franchises, corporate or otherwise, to execute and deliver this Agreement and perform its obligations hereunder;

7.1.2 its execution, delivery, and performance of this Agreement have been duly authorized by the Party's governing entity, and this Agreement has been duly executed and delivered for it by the signatories so authorized, and constitutes its legal, valid, and binding obligation;

7.1.3 its execution, delivery, and performance of this Agreement will not result in a breach or violation of, or constitute a default under any Agreement, lease, or other instrument to which it is a Party or by which it or its properties may be bound or affected;

7.1.4 it has not received any notice, nor to the best of its knowledge, is there pending or threatened violation of any Applicable Law, decree, award, permit, or any other order which would materially and adversely affect its ability to perform hereunder; and

7.1.5 the information in all documents furnished, or to be furnished, to the other Party is true and accurate, and does not fail to include any statement of material fact, the

omission of which would be misleading.

7.2 Contractor's Warranties.

7.2.1 Contractor represents and warrants that:

- (i) it is duly licensed and qualified to do business and otherwise permitted to perform the Work and do business in the State of California;
- (ii) the Project will be constructed to satisfy all Legal Requirements, and all requirements of a Utility, the Contract Documents, and the Agreement, and to produce a fully functional Project that is capable of operating free from major defects for a design life of at least 25 years, assuming customary operation and maintenance;
- (iii) all Equipment installed shall conform to the Contract Documents, Legal Requirements, and Contract requirements, any requirements of a Utility, and this Agreement; the Equipment is compatible with all other mechanical, electrical, and other subsystems and components on the Property; the Equipment will meet or exceed all testing standards;
- (iv) the Work, including all workmanship and materials incorporated, will be of suitable grade, quality, and function as specified in the Scope of Work, and shall be free from defects in design, engineering, design, materials, construction, and workmanship;
- (v) Contractor shall use reasonable efforts to obtain all available warranties and guarantees from Suppliers and Subcontractors from which Contractor procures machinery, materials, services, and Equipment. Said warranties and guarantees shall be made available to the City to the full extent of their terms. Contractor shall perform the Work consistent with the terms of said warranties and guarantees, and shall not take any actions or make any omissions that may violate or void such warranties or guarantees. All applicable Equipment warranties shall be extended to 20 years, if the standard warranty period is not 20 years or longer. Contractor shall assign remaining Equipment warranties to the City. Contractor shall deliver to the City copies of all applicable warranty and guarantee agreements from the Contractor, or any Subcontractor or Supplier;
- (vi) Contractor shall use Subcontractors who are qualified, licensed, and bonded within the State of California to perform the work so subcontracted;
- (vii) it is familiar with all applicable Incentives and Applicable Laws;
- (viii) Contractor is financially solvent, able to pay its debts as they mature, and possesses sufficient working capital to complete the Work and perform all

obligations under this Agreement, and that there are no other circumstances that would adversely affect its ability to perform the Work and all obligations under this Agreement; and

(ix) it has all requisite authority to license the use of proprietary property, both tangible and intangible, contemplated by this Agreement.

7.2.2 Independent Warranties. Contractor's warranties under this Section are separate and independent of one another. Contractor's failure to meet any of the foregoing warranties shall constitute a breach and is deemed an Event of Default, pursuant to this Agreement.

7.2.3 Warranty Period. Contractor shall remedy any breach of the warranties set forth in this Section ending on a date 10 years after the final completion date of the Project ("Warranty Period").

SECTION 8. INDEMNIFICATION.

8.1 Indemnification. To the full extent permitted by law, each Party will indemnify, hold harmless, and release and defend the other Party, its officers, employees, agents, and assigns, from and against any and all actions, claims, demands, damages, losses, and expenses, including attorneys' fees and all other defense costs, that may be asserted by any person or entity in whole or in part, arising out of that Party's activities under this Agreement, including the activities of other persons employed or utilized by that Party in the performance of this Agreement, excepting liabilities due to the negligence or willful misconduct of the indemnified Party. This indemnification obligation is not limited in any way by insurance held by either Party, and will continue to bind the Parties after the termination/completion of this Agreement.

SECTION 9. DISPUTE RESOLUTION.

9.1 Informal Resolution. In the event of a dispute, claim, or controversy arising out of or in connection with this Agreement, the Parties agree to confer promptly in an attempt to resolve the matter informally. If any such dispute arises, the Parties shall attempt to resolve the dispute first through direct discussion for a period of 30 business days following notice by one of the Parties to the other.

9.2 Mediation. If said dispute cannot be resolved informally within 30 business days following notice of the dispute, the Parties shall endeavor to settle the dispute by mediation. Once one Party files a request for medication with the other Party, the Parties agree to conclude such mediation within 60 business days of the filing of the request. Either Party may terminate mediation at any time after the first session by written notice to the other Party and the mediator. The Parties shall endeavor to utilize a mutually

agreeable mediator.

9.3 Attorneys' Fees. The prevailing Party in any legal action brought to enforce the terms of the Agreement or arising out of the Agreement (including actions to enforce an arbitration award) may recover its reasonable costs and attorneys' fees expended in connection with such action or arbitration proceeding from the other Party.

SECTION 10. ASSIGNMENT.

10.1 This Agreement may not be assigned by either Party in whole or in part without the prior written consent of the other Party, which consent may not be unreasonably withheld or delayed. This Agreement will be binding on, enforceable by, and inure to the benefit of, the Parties hereto and their respective successors and permitted assigns. Any assignment made in contravention of this clause will be void and unenforceable.

SECTION 11. MISCELLANEOUS.

11.1 Representatives. The City may designate one or several agents, representatives, or Consultants to provide administration of the Agreement upon written notice of such to Contractor. When such written notice is provided, except as otherwise provided in the Agreement, or when direct communications are warranted by special circumstances, the City and Contractor shall communicate through the City's selected representative(s).

11.2 Access. When applicable, the City shall issue necessary keys to Contractor to access the improvements on the Property, which Contractor shall return to the City upon final completion of the Project or at any time upon the City's request. Contractor shall reimburse the City for the cost of re-keying all of the City's locks if the keys are not returned to the City.

11.3 Ownership and Use of Drawings, Data, Reports, and Other Documents.

11.3.1 The Drawings, Engineering Documents, and other Contract Documents are the property of the City, and the instruments of the services of Contractor and its Subcontractors. Contractor may retain one contract set.

11.3.2 Contractor grants the City a perpetual, irrevocable, transferrable, non-exclusive, royalty-free license (assignable to all persons to whom assignment of this Agreement may be made) under all patents, copyrights, proprietary information, and other intellectual property rights of Contractor related to the use or enjoyment of all or any part of the Work now or hereafter owned or controlled by Contractor.

11.4 Waiver of Consequential Damages and Limitation of Liability. Notwithstanding any provision in this Agreement, neither Party shall be liable for any indirect, special,

punitive, consequential, or exemplary damages of any kind arising out of or in connection with this Agreement. Each Party's liability shall be limited to direct, actual damages only, and a Party's total liability under the Agreement, whether based on an action in contract, equity, negligence, tort, or otherwise, shall not exceed the Contract Price, provided that the foregoing limitation shall not apply to damages caused by a Party's gross negligence or willful misconduct.

11.5 Construction.

11.5.1 Headings. Section and subsection titles and captions contained in this Agreement are inserted as a matter of convenience and for reference and in no way define, limit, extend, or describe the scope of this Agreement or the intent of any of its provision

11.5.2 Terminology. Unless the context of this Agreement otherwise clearly requires, references to the plural include the singular and the singular the plural, and "or" has the inclusive meaning represented by the phrase "and/or." The use herein of the word "including," when following any general statement, term or matter, shall not be construed to limit such statement, term or matter to the specific items or matters set forth immediately following such word or to similar items or matters, whether or not limiting language (such as "without limitation," or "but not limited to," or words of similar import) is used with reference thereto, but rather shall be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such general statement, term, or matter. The words "hereof," "herein," "hereunder," and similar terms in this Agreement refer to this Agreement as a whole and not to any particular provision of this Agreement. Unless otherwise stated, any reference contained in this Agreement to a "Section," "subsection" or "clause" refers to the provisions of this Agreement. Wherever the context may require, any pronouns used in this Agreement shall include the corresponding masculine, feminine, or neuter forms.

11.6 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The Parties hereto may execute this Agreement, individually or in a representative capacity, and forward an executed counterpart signature to the other Party by PDF image, overnight express, or other means, and the Party receiving such executed counterpart signature shall be authorized to attach it hereto as the legal and valid signature of such executing Party. The Party receiving such executed counterpart signature, together with their attorneys, shall be able to rely on the validity of such executed counterpart signature as fully as if the original of such signature was affixed hereon. This Agreement shall not be effective until the execution and delivery between each of the Parties of at least one set of counterparts. The Parties authorize each other to detach and combine original signature pages and consolidate them into a single identical original. Any one of such completely executed counterparts shall be sufficient proof of

this Agreement.

11.7 Laws to Govern.

11.7.1 The laws of the State of California shall govern the rights, obligations, duties, and liabilities of the City and Contractor under this Agreement and shall govern the interpretation of this Agreement. The venue shall be in the County of Marin, California.

11.7.2 In the performance of this Agreement, Contractor shall comply with all Applicable Laws, regulations, ordinances, and codes of the federal, state, and local governments, including without limitation the City Municipal Code.

11.8 Notices. Any notices or filings required to be given or made under this Agreement shall be served, given, or made, or made in writing upon the City or Contractor, as applicable, by personal delivery or commercial overnight courier (with a copy sent via PDF image, regular mail, or fax) to the respective address given below, or at such address as the Party may provide in writing from time to time:

The City: The City of Sausalito
420 Litho Street
Sausalito, CA 94965
Attn: Adam Politzer, City Manager
Telephone: 415-289-4166
Email: apolitzer@ci.sausalito.ca.us

Contractor: ABM Building Services, LLC
3585 Corporate Court
San Diego, CA 92123
Attn: Mark Swearingen, Vice President and
General Manager
Telephone: 858-974-5557
Email: mark.swearingen@abm.com

11.9 Waiver. Waiver by the City or Contractor of any breach for violation of any term, covenant, or condition, of this Agreement shall not be deemed to be a waiver of any other term, covenant, or condition or any subsequent breach or violation of the same or of any other term, covenant, or condition.

11.10 Entire Agreement. This Agreement and the Exhibits attached hereto constitute the

entire Agreement and understanding between the Parties hereto, and supersedes any prior or contemporaneous agreement between the Parties oral or written, unless expressly incorporated herein. The Agreement shall not be considered modified, altered, changed, or amended in any respect unless in writing and signed by the Parties hereto.

11.11 Severability. If any provision of this Agreement or the application of it to any person or situation shall to any extent be held invalid or unenforceable, the remainder of this Agreement and the application of such provisions to persons or situations other than those as to which it shall have been held invalid or unenforceable, shall not be affected, shall continue in full force and effect, and shall be enforced to the fullest extent permitted by law.

11.12 Term and Termination. The term of this Agreement begins on the Effective Date as stated in this Agreement and shall terminate upon the completion of the Work to the satisfaction of the City and the City's issuance of a Final Completion Certificate, unless otherwise terminated pursuant to this Agreement. All of the covenants, representations, and Warranties in the Agreement, including indemnification obligations, which are intended to bind the Parties after the completion of the Project or termination of the Agreement will survive such completion or termination periods. Either Party may terminate the Agreement only as provided in this Agreement.

11.13 Execution of Other Documents. The parties to this Agreement shall cooperate fully in the execution of any and all other documents, and in the completion of any additional actions that may be necessary or appropriate to give full force and effect to the terms and intent of the Agreement.

In consideration of the covenants, conditions, and stipulations set forth in this Agreement and for good and valuable consideration, the Parties, intending to be legally bound, agree as set forth in, and execute, this Agreement. Each person executing this Agreement on behalf of a Party represents that he or she is authorized to execute on behalf of, and to commit and bind, the Party to this Agreement.

CONTRACTOR

CITY OF SAUSALITO

By: _____
Mark Swearingen
Title: Vice President and General Manager

By: _____
Adam W. Politzer
Title: City Manager, City of Sausalito

Analysis of cost savings to the City due to conservation measures at MLK

The renovations and repairs planned for the Martin Luther King, Jr. Complex (MLK) are designed specifically to increase energy efficiency and promote a safer, more comfortable environment. In particular, the initial construction contract includes roofing, HVAC, and gas lines updates. The current roof is an Asphalt Built Up Roof (BUR) and is past its current life with leaks and puddling while the proposed roof is GAF EverGuard Thermoplastic Polyolefin (TPO). The anticipated savings in utilities from the roofing, as indicated from the manufacturer's report below, are estimated to be just over \$12,000 per year. Further, the new roofing qualifies for LEED, or Leadership in Energy and Environmental Design, status and is considered a sustainable product including credit for recyclable materials.



GAF Savings Report

Project: City of Sausalito - Sausalito, CA
 Prepared By: ABM
 Date: 9/26/2016

ENERGY SAVINGS COMPARISON

Roofing Energy Savings

	Proposed Roof Design 1
Total Roofing Rebates	\$0
Annual Utility Cost Savings	\$12,560
Details of Energy Savings Comparison:	
Total Annual Energy Savings	\$12,560
Cooling energy savings	\$7,086
Heating energy savings	\$102
Cooling season demand savings	\$5,372
Details of Comparison:	
Solar load for location chosen (Annual Average Btu/ft ² per day)	1,509.3
Cooling load - current roof (Btu/ft ² per day)	4,324
Heating load - current roof (Btu/ft ² per day)	11,455
Cooling load - proposed roof (Btu/ft ² per day)	486
Heating load - proposed roof (Btu/ft ² per day)	11,367
Average heat load reduction during cooling season (Btu/ft ² each month)	9.2
Maximum heat load reduction during cooling season (Btu/ft ²)	10.7

The proposed HVAC replacements are designed as "Air Side Economizers" at 13.5 and 14 Seasonal Energy Efficiency Rating (SEER), compliant with current Title 24 standards. The existing Roof Top Units (RTUs) are past their useful life, do not have economizers, and are below state standards for efficiency, estimated between 8 and 10 SEER. According to a 2011 United States Department of Energy (DOE) report, "Energy Savings and Economics of Advanced Control Strategies for Packaged Air-Conditioning Units with Gas Heat", having Air Side Economizers reduce energy consumption by 35% in the San Francisco area (pg. 12 of the report) while a UC-Davis report estimates 20-30% in energy savings in California climates. Adding in the new roof, the workload for the new roof top units will be reduced even further. Total savings should exceed \$25,000 in total each year. Total savings over the 20 year expected life of the project should exceed \$500,000.

The gas line repairs are necessary to install the new HVAC roof top units as well as to comply with current building codes. These repairs comprise approximately \$75,000-100,000 or 6.25% of the project costs. The additional time and costs to separately bid the gas line repairs rather than combine the entire project will delay the project until possibly next Summer and increase the costs of new roof-top units due to anticipated changes in SEER requirements by more than the proposed cost of the gas line repairs.

Marin Independent Journal

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2070423

CITY OF SAUSALITO (L)
ATTN: ACCOUNTS PAYABLE
420 LITHO ST
SAUSALITO, CA 94965-1933

PROOF OF PUBLICATION (2015.5 C.C.P.)

STATE OF CALIFORNIA County of Marin

I am a citizen of the United States and a resident of the County aforesaid: I am over the age of eighteen years, and not a party to or interested in the above matter. I am the principal clerk of the printer of the MARIN INDEPENDENT JOURNAL, a newspaper of general circulation, printed and published daily in the County of Marin, and which newspaper has been adjudged a newspaper of general circulation by the Superior Court of the County of Marin, State of California, under date of FEBRUARY 7, 1955, CASE NUMBER 25566; that the notice, of which the annexed is a printed copy (set in type not smaller than nonpareil), has been published in each regular and entire issue of said newspaper and not in any supplement thereof on the following dates, to-wit:

09/27/2016

I certify (or declare) under the penalty of perjury that the foregoing is true and correct.

Dated this 28th day of September, 2016.

Donna Lajarus

Signature

PROOF OF PUBLICATION

Legal No. 0005821599

**NOTICE OF PUBLIC HEARING
BEFORE THE CITY COUNCIL OF THE CITY
OF SAUSALITO
REGARDING AWARD OF AN ENERGY
CONSERVATION CONTRACT
PURSUANT TO CALIFORNIA GOVERNMENT
CODE SECTION 4217**

NOTICE IS HEREBY GIVEN that at 7pm or as soon thereafter as the matter can be heard, on Thursday, October 13, 2016 in the Council Chambers, 420 Litho Street, Sausalito, CA, the City Council will conduct a Public Hearing as required by Section 4217 of California Government Code, at which it will hear and consider information concerning a proposal to award an energy services construction contract for energy efficiency improvements to the Martin Luther King facilities.

A copy of the staff report will be available to interested parties at the City Clerk's Office or online at <http://www.ci.sausalito.ca.us/index.aspx?page=43> on Monday, October 10, 2016.

If there are any further questions please call the Public Works Department at (415) 289-4106. Those wishing to comment on the proposed project may either appear in person at the Public Hearing or submit written communications to the City Clerk.

Debbie Pagliaro, Temporary City Clerk
City of Sausalito
420 Litho Street
Sausalito, CA 94965
(415) 289-4134
dpagliaro@ci.sausalito.ca.us

NO. 1220 Sept. 27, 2016